

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36609

FOSTER POULTRY FARMS—
EX PARTE PETITION FOR EMERGENCY SERVICE ORDER

Digest:¹ The Board directs Union Pacific Railroad Company to continue to carry out its specific service commitments described in this decision to Foster Poultry Farms' facilities in Traver, Cal. and Turlock, Cal.; to continue to participate in weekly technical conferences with the Board's Office of Public Affairs, Governmental Assistance, and Compliance; and to continue to file daily service status reports with the Board, until July 17, 2022.

Decided: July 1, 2022

On June 15, 2022, Foster Poultry Farms (Foster Farms), a chicken grower and processor, filed an ex parte petition for an emergency service order under 49 U.S.C. § 11123. The petition requested that the Board immediately direct Union Pacific Railroad Company (UP) to give preference and priority to the movement of unit trains of corn tendered to UP by or on behalf of Foster Farms from origins in the midwestern United States to Foster Farms' facilities in Traver, Cal. and Turlock, Cal.

According to Foster Farms' petition, an emergency service order was necessary because of the "substantial, measurable deterioration of rail service" by UP to the Traver and Turlock facilities, which allegedly has been ongoing since February 2022. (Pet. 2-3.) Foster Farms stated that it depends on corn delivered by UP to feed its tens of millions of chickens and to supply nearby poultry producers, and that it also distributes the processed corn to hundreds of thousands of cattle in California's San Joaquin Valley. (Id. at 3, 7.) Foster Farms stated that it leases four unit trains from UP that are dedicated to Foster Farms' service. (Id. at 3.) Foster Farms specifically asked the Board to direct UP to prioritize its unit trains and the assignment of crews to those unit trains; assignment of sufficient locomotives to the loading origins to ensure that, once a Foster Farms train is loaded, there is sufficient locomotive power for the unit train to begin its trip to the Traver and Turlock facilities immediately; and daily status reports by UP regarding the delivery of Foster Farms' trains, to include the number of trains and cars billed to Foster Farms' Traver and Turlock facilities and actual performance versus trip plan data for these shipments. (Id. at 8.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

On June 16, 2022, UP filed a reply acknowledging that it has not provided adequate service to Foster Farms and noting that it is determined to improve. (UP Reply 1.) UP stated that it would make improvements in service by making certain commitments, including providing an additional train set into service for Foster Farms, prioritizing over other network requirements the use of those trains/cars as well as crews and locomotives for Foster Farms' service, providing the Board with daily data specific to Foster Farms, and participating in weekly technical conferences between the parties and the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC). (Id. at 1-2.) UP's reply included a verified statement by Bradley S. Moore, Vice President of Customer Care and Support for UP, providing information on the status and schedule of Foster Farms' unit trains. Moore stated that the trains intended to serve the Turlock facilities are GSTUHH 10 (FR11) and GSTUSO 15 (FR12), and that the trains intended to serve the Traver facilities are GSCTTR 12 (FR14) and GSVLTR 16 (FR15). (UP Reply, V.S. Moore.) Moore also provided several service plan adjustments that he stated should directly result in improvements to Foster Farms' service, including supplementing borrow-out employees and onboarding new hires at the Roseville Hub in California; implementing projects that have decreased unit train dwell; and leaving locomotives with inbound and outbound grain trains so trains can depart as crews become available. (Id.)

By decision served on June 17, 2022, the Board found that an emergency situation exists and issued an order under 49 U.S.C. § 11123. The decision ordered UP to perform its specific commitments of service as to FR11, FR12, FR14, and FR15 as described in Moore's verified statement, to the greatest extent possible. The Board stated that if UP needed to deviate from its proposed schedule for those trains, UP should advise the Board and Foster Farms in writing as soon as practicable. The Board also directed Foster Farms to file a response to UP's reply and noted that the Board would continue to monitor UP's rail service.

UP has submitted daily status reports to the Board, as it agreed to do in its June 16 reply, providing tracking information on Foster Farms' trains, including the additional train that is serving Foster Farms (FR99). On June 22, 2022, Foster Farms filed its response, stating that it received one unit train of corn between the Board's decision served on June 17 and June 20, rather than the three unit trains it expected during that period; that it was "forced to feed only its chickens to ensure their survival;" and that it did not have enough corn feed to supply the dairy cattle. (Foster Farms Reply 2-3, June 22, 2022.) According to Foster Farms, when a train arrived on June 21, 2022, it was able to resume distribution to dairy cattle and other chicken growers. (Id. at 3.) Foster Farms emphasizes the need for consistent service from UP that will allow Foster Farms to build up its storage and alleviate expenditures on finding corn from alternative sources and transportation modes to meet its contractual obligations to customers. (Id. at 4.) Foster Farms asks that the Board continue the emergency service order for at least 30 days and requests that during this period UP should provide written notice of any deviations to the schedules it provides Foster Farms, along with an explanation of why UP is not able to meet

the stated schedule, and keep Foster Farms and the Board apprised of UP's execution of its commitments and service plan adjustments to improve service to Foster Farms. (Id. at 4-5.)²

Foster Farms filed a letter on June 28, 2022, indicating that it received four unit trains between June 21 and June 28 and that it expects to receive another three unit trains by July 1. (Foster Farms Letter 1, June 28, 2022.) Foster Farms notes that, as a result of the deliveries received between June 21 and June 28, the stocks of corn at the Traver and Turlock facilities “have nearly been built back up, and Foster Farms’ ability to feed its own livestock while meeting its obligations to its customers has been restored in the short term.” (Id.) Foster Farms, however, urges that the Board’s order remain in place and that the Board “continue to monitor the situation” for at least the initial 30-day emergency period. (Id. at 2.) On June 29, 2022, Foster Farms filed another letter stating that five unit trains had actually been delivered between June 21 and June 28, and the next three trains are expected to arrive by July 2, 2022.³ (Foster Farms Letter 1, June 29, 2022.) Foster Farms reiterates that the Board’s order should remain for at least the 30-day initial period.

The decision on June 17, 2022, found that an emergency service order under 49 U.S.C. § 11123 was warranted. The dire emergency caused by UP’s acknowledged inadequate service – Foster Farms’ inability to feed its chickens or to supply feed for livestock – has been mitigated, but Foster Farms’ stocks are still not fully replenished, and it is still at risk if service were to falter. The Board finds that continued oversight of UP’s service to Foster Farms under 49 U.S.C. § 11123 is appropriate. Therefore, per Foster Farms’ initial request, which UP did not oppose and which the Board effectively granted in its prior order, the initial 30-day emergency service period, starting with the Board’s decision on June 17, 2022, will continue through July 17, 2022. For the remainder of this period, UP is directed to continue to carry out its specific commitments of service for loaded and empty train sets serving Foster Farms’ Turlock and Traver facilities as set out in UP’s daily status reports, to the greatest extent possible, and to keep the Board informed through weekly technical conferences with OPAGAC and filing daily status reports to the agency. Should UP need to deviate from its proposed schedules included in its daily status reports, UP should advise the Board and Foster Farms in writing as soon as practicable. The daily status reports should include any changes to service or schedules previously set forth and explanations for any such changes.

Nothing in this order relieves UP of its common carrier obligation with respect to its other shippers and the rest of its network. The Board will continue to monitor UP’s rail service

² On June 22, 2022, UP and Foster Farms also filed letters explaining information contained in Moore’s verified statement. Foster Farms states that it concurs with UP that Moore was referring to the ETAs for arrival of certain unit trains at loading locations (not the Turlock and Traver facilities).

³ UP’s status report filed with the Board on June 30 indicated that a loaded unit train was expected to arrive at Foster Farms on June 30, with a second and third scheduled to arrive on July 1 and July 2, respectively. (See UP Status Report, Enclosure, June 30, 2022.)

closely and OPAGAC, although it is also advising the Board, will continue to be available to the parties should they need additional assistance.

It is ordered:

1. UP is directed to provide service to Foster Farms as described above, continue to participate in weekly technical conferences with OPAGAC, inform the Board and Foster Farms in writing of any need to deviate from its proposed schedules, and continue to file daily service status reports with the Board, until July 17, 2022.

2. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.